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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/373,576	08/13/1999	J.KEITH KELLY	8344-001-27	2727

30827 7590 07/12/2002

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EXAMINER

GARG, YOGESH C

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 07/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/373,576

Applicant(s)

KELLY ET AL.

Examiner

Yogesh C Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Applicant's Response, paper number 9, to First Office Action, paper number 5 is acknowledged and entered. Currently claims 1-25 are pending for examination.
2. Note that the spelling of reference "Gerald" used in the earlier Office Action is to be replaced by correct spelling "Gerland". In this Office action necessary spelling correction has been made.

Response to Arguments

3. Applicant's arguments filed on 05/29/2002 with regards to claims 1-25 have been fully considered but they are not persuasive.

Applicant has argued that claims 1 (" Claim 1 is allowable over the cited references...
....Applicant respectfully direct the Examiner to the MPEP 2121...Accordingly, Applicants respectfully submit that Claim 1, and Claims 2-12, which depend from Claim 1, are allowable over the cited references " -Pages 1-2 of the Amendment, paper 9) and 13 (pages 2-3, " Claim 13 is allowable ..." a processor.....storage device.....user input/output device....processor being configured....presenting a user with at least one enquiry for the user.....". None of the cited references singularly or I combination...teaches...claimed invention..... Accordingly, Applicants respectfully submit that claim 13 and claims 14-25, which depend from claim 13, are allowable over the cited references ") are allowable over cited references. Apropos applicant's remarks, examiner respectfully begs to differ for the following reasons:

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(i) Gerland discloses existing gardening web sites like Burpee and National Gardening doing the same functions as claimed in the claims 1 and 13. Gerland teaches browsing the gardening web sites, placing online orders for catalogs, flowers, and other gardening related material, finding gardening tips to defend against pests, growing vegetables like tomatoes, viewing videos on planting a tree, Questions and Answer areas (See marked pages 1,2, 5,6,7,8). The web pages of National Gardening website (www.garden.org) presents a user with several inquiries like "What DO You Want To Grow Today", Gardening Questions & Answers", 1999 Buyers Guide", "Online Gardening courses", Feature Article Library", NGA Horticultural Dictionary", NGA Plant Namefinder" and "National Gardening Magazine " (See marked page 10. This page shows the first inquiry " What DO You Want To Grow Today". Additional web pages (marked from 13-19) showing other inquiries, " Feature Article Library", NGA Horticultural Dictionary", NGA Plant Namefinder" and "National Gardening Magazine " were extracted from the February 1999 web site of www.garden.org, which was accessed through www.archive.org, and are enclosed for support to show that the National Gardening website presents a user with at least one enquiry and after entering the keyword relating to gardening material in the search area the user is expected to get the answer relating to the gardening material.

It is well known and established fact that a web site, like www.garden.org as referred to in Gerland, is a collection of related HTML documents and associated files, databases served by an HTTP server on the World Wide Web and the users need a Web browser and an Internet connection to access a Web site and a search engine to search the documents or related material by using keywords. A server is a computer running administrative software that controls access to the resources, databases, Internet and responding to commands from a user. A computer includes a processor, memory which is a storage device. In order to use the web browser user will be using a computer and an input/output device like keyboard, mouse and

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monitor for output. To support this explanation on the functioning of the web sites, web browser and servers please see definitions of "Web site-page 506", Web browser-page 505", "Http server-page 239 ", and "serve-page 430r" extracted from "Microsoft Press Computer Dictionary", third edition 1997, Microsoft Press, Redmond Washington.

In view of above the rejection of claims 1 and 13 is still maintained. Since claims 2-12 and 14-25 are dependencies of claims 1 and 13 respectively their rejection is also maintained.

Further, with reference to the applicant's request to support the official notice used in the rejection of claims 3 and 16, enclosed are two references (i) "Consumer Labeling Initiative; Notice of Project Initiation ", Federal Register: March 22, 1996, Volume 61, Number 57-Notices, pages 12011-12013, extracted from www.epa.gov on 6/28/02 and (ii) Notice, " EPA Questions & Answers The Consumer Labeling Initiative ", September 4, 1997 extracted from www.epa.gov on 06/28/02. Reference (i) on page 12012 categorically emphasizes the importance of displaying a label associated with the gardening material to the user, " *SUMMARY: EPA is launchingon ways to improve the environmental, health.....safe use information appearing on household product labels, specifically home and garden pesticides.....*" and reference (ii), Page 1, under heading 2. "Why was the CLI project initiated?", discloses displaying labels associated with gardening material , "... Pesticide products, for example, are labeled under rules that originated with agriculture.....in the consumer market ". Note: Pesticides are gardening materials).

Applicant argues that claims 4-7 and 17-20 are allowable in view of the fact that Sturgeon does not cure the deficiencies of Gerland et al. in claims 1 and 13. Since the applicant's arguments regarding claims 1 and 13 have been considered but not found persuasive, as analyzed above, rejection of claims 4-7 and 17-20 in view of Gerland & Sturgeon is maintained.

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This is a Final Rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-2, 8-15, and 21-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerland et al, (Article by Gerland Jim, and Winer, Mark, " Taking a Spade to the Web, Buffalo News; Buffalo, N.Y.; Apr 7, 1998, pages 2, extracted on Internet on 01/15/2002 from Proquest database. Burpee and National Gardening Association web sites are referred in this article. Copies of home pages of Burpee's web site www.burpee.com as available in, 1996, 1997 and 1998 and copies of Home Page of National Garden Association web site www.garden.org as available in January 1999 are attached. The two Article pages are marked 1 and 2. Copies of

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Burpee's web site are marked 3,4,5,6,7 and that of National Garden Association are marked 8, 9, 10, 11 and 12.), hereinafter, referred to as Gerland.

With regards to claims 1-2, 8-15, and 21-25, Gerland teaches a method and a system for identifying material comprising inputting the inquiry on a computer having a storage device for storing database of gardening material, a user input/output device including an Internet browser, a processor connected to storage device and user input/output device to execute the steps of presenting a user with at least one inquiry via input device and identifying at least one gardening material based upon the inquiry, and offering the user the opportunity to purchase at least one gardening material (Gerland discloses existing gardening web sites like Burpee and National Gardening doing the same functions as claimed in the claims 1-2, 8-15, and 21-25. Gerland teaches browsing the gardening web sites, placing online orders for catalogs, flowers, and other gardening related material, finding gardening tips to defend against pests, growing vegetables like tomatoes, viewing videos on planting a tree, Questions and Answer areas (See marked pages 1,2, 5,6,7,8). The web pages of National Gardening web-site (www.garden.org) presents a user with several inquiries like "What DO You Want To Grow Today", Gardening Questions & Answers", 1999 Buyers Guide", "Online Gardening courses", Feature Article Library", NGA Horticultural Dictionary", NGA Plant Namefinder" and "National Gardening Magazine " (See marked page 10. This page shows the first inquiry " What DO You Want To Grow Today". Some more web pages showing other inquiries, " Feature Article Library", NGA Horticultural Dictionary", NGA Plant Namefinder" and "National Gardening Magazine " were extracted from the February 1999 web site of www.garden.org, which was accessed through www.archive.org, and are enclosed for support to show that the National Gardening web-site presents a user with at least one inquiry and after

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entering the keyword relating to gardening material in the search area the user is expected to get the answer relating to the gardening material.

It is well known and established fact that a web site, like www.garden.org as referred to in Gerland is a collection of related HTML documents and associated files, databases served by an HTTP server on the World Wide Web and the users need a Web browser and an Internet connection to access a Web site and a search engine to search the documents or related material by using keywords. A server is a computer running administrative software that controls access to the resources, databases, Internet and responding to commands from a user. A computer includes a processor, memory which is a storage device. In order to use the web browser user will be using a computer and an input/output device like keyboard, mouse and monitor for output. To support this explanation on the functioning of the web sites, web browser and servers please see definitions of "Web site-page 506", Web browser-page 505", "Http server-page 239 ", and "serve-page 430r" extracted from "Microsoft Press Computer Dictionary", third edition 1997, Microsoft Press, Redmond Washington.).

Gerland further discloses offering the user the opportunity to purchase at least one gardening material (see page marked 6, "...*Online Ordering....*"). Gerland also teaches directing at least one enquiry towards the user's state or region of the country (See page marked 10, "...*Gardening Information For Your Region.....Select a region....*").

Gerland further presents the user with at least one inquiry directed towards the symptoms of a problem observed by the user and then identifying a pest based upon the user's inquiry and selecting gardening material from the group consisting of pesticides, fertilizers and seeds (See page marked 1, paragraph 5, "...*We found lots of good Web sites.....gardening tips ranging from dealing with garden pests....or growing better tomatoes ...*", page marked 2, 1st paragraph, "...*www.burpee.com, wheresubmit*

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questions to be answered by Charlie Nardozzi, senior horticulturist.....", page marked 2, paragraph 4, "...From its home page.....offered tips about defendingfrom unwanted pests.....and even tips on keeping your dogs and cats pest-free..." and page marked 8, "...Welcome to the Burpee Question & Answer Page.....tap on the expert knowledge of the National Gardening Association and Burpee.....have a gardening question.....type it and we'll dig it for you.....search the Question & Answer Library.....". Note: it will be inherent to identify a pest corresponding to the user's responses to the enquiry from the group consisting of: insects, fungi, nematodes, snails, slugs, weeds and diseases and also to select a gardening material from the group consisting pesticides, fertilizers and seeds to growing better tomatoes or create a successful garden.). Gerland also discloses displaying a list of retailers or dealers from which the gardening material is available (See page marked 11, "...Buyers Guide 1999.....The new 1999 Buyers Guide gives you easy to use hyperlinks to garden company Websites and fast e-mail forms.....").

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerland.

With regards to 3 method claim and 16 system claim, Gerland

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teaches a method and system for identifying a gardening material as disclosed above in method claim 1 and system claim 13 respectively. In Gerland both Burpee and National Garden Association web sites do not disclose displaying a label associated with the gardening material to the user. Official Notice is taken of both the notoriously well-known concept and benefits of displaying a label associated with the gardening material to the user in Gerland. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to include the concept of displaying a label associated with the gardening material to the user in Gerland because it is universally known that gardening material contains hazardous materials in the form of pesticides and fertilizers and it is mandatory to display directions for use, caution users against incorrect use of the contents, display safety measures on the exterior of the packages to eliminate the risk of any accident that can take place.

8. Claims 4-7 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerland in view of Sturgeon et al. (US Patent number 5,726,884), hereinafter, referred to as Sturgeon.

With regards to 4-7 method claims and 17-20 system claims, Gerland teaches a method and system for identifying a gardening material as disclosed above in method claim 3 and system claim 16. In Gerland, National Gardening Association site further discloses that the inquiry is directed towards the user's region in the country (See page marked 10, "...*Gardening Information For Your Region*.....*Select a region*...."). Further, while analyzing the limitations of claims 3 and 16 above that label is a material safety data sheet and should be applied to the gardening material for retail sales were rendered obvious.

In Gerland, both Burpee and National Gardening Association Web sites do not disclose that at least one enquiry is directed towards the user's state, and label varies depending upon

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the user's state. However, Sturgeon teaches that label varies depending upon the user's state and enquiry is directed toward's the user state (col.1, line 5-col.2, line 49, specially lines 7-12, "*....This invention relates to....regulatory, review of.....use, handle, and/or transport of chemical products.....considered hazardous to humans.....*", and col.2, lines 1-6, "*..These laws often have overlapping jurisdiction and are not always consistent with one another.....Several states.....have passed their own hazardous substance laws.....These laws still apply in those states and in many cases supersede their Federal counterparts..*". Note: Sturgeon teaches that state laws differ for hazardous materials and therefore it will be mandatory to know the state to follow the laws of that state while using, handling or transporting hazardous materials like gardening materials, which include pesticides and fertilizers).

It would have been obvious to a person of an ordinary skill in the art at the time of the invention to include the feature that at least one enquiry is directed towards the user's state, and label to vary depending upon the user's state because states have different laws with regards to use, handling and transport of hazardous materials (as suggested in Sturgeon, col.2, lines 1-6) and knowing the state would enable the suppliers to supply hazardous materials like gardening materials including pesticides and fertilizers with labels displaying safety, caution and warning data in conformity with the laws of the state where the material is to be used.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F (8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Yogesh C Garg
Examiner
Art Unit 3625

YCG
July 8, 2002


WYNN W. COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3800